

Supreme Court of Kentucky

2010-SC-000538-KB

TO BE PUBLISHED

FINAL

DATE *Attorney*
11-30-2010

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

JENNIFER SUE WHITLOCK

RESPONDENT

OPINION AND ORDER

Respondent, Jennifer Sue Whitlock, stands accused of violating several provisions of the Rules of Professional Responsibility pertaining to her representation of Gale Ellis beginning in 2002. The Board of Governors of the Kentucky Bar Association has recommended that Respondent, whose Bar Roster Address is 1401 Winchester Avenue, Suite 526, Ashland, Kentucky 41105, and whose KBA Member Number is 87562, be found to have committed the ethical violations, suspended from the practice of law in this Commonwealth for one year, and ordered to refund \$1,650 in fees to Ms. Ellis and consult with and agree to any monitoring by the Kentucky Lawyer Assistance Program (KYLAP). This Court, finding no reason for further review, adopts the recommendation of the Board.

In August of 2002, Ms. Ellis hired Respondent to represent her in a visitation dispute involving Ms. Ellis's grandchild. Ms. Ellis paid Respondent \$1,400 for her representation. However, Respondent neglected to do any work in furtherance of her representation, nor did she return any phone calls from

the client. Nonetheless, in 2007, Ms. Ellis paid Respondent an additional \$250 to represent her in a medical malpractice matter. Respondent similarly failed to perform any work in relation to this matter. To date, Respondent has not returned any of Ms. Ellis's money.

On September 13, 2009, Respondent was personally served a bar complaint filed by Ms. Ellis, charging her with three counts of professional misconduct in her representation of Ms. Ellis. A letter accompanying the complaint informed Respondent of her duty to respond to the complaint and that failure to do so could result in an additional charge of misconduct. After an initial lack of response, Respondent received a certified reminder letter attached with another copy of the complaint, but again failed to respond.

Respondent has now been charged with four counts of misconduct stemming from her representation of Ms. Ellis: (1) failure to act with reasonable diligence and promptness in representing a client, in violation of SCR 3.130-1.3; (2) failure to respond to her client's inquiries regarding the status of her cases, in violation of SCR 3.130-1.4; (3) failure to inform her client of the termination of representation, failure to return documents, and failure to return the unearned portion of fees paid to her by her client, in violation of SCR 3.130-1.16(d); and (4) failure to file a response to a bar complaint after being effectively served, in violation of SCR 3.130-8.1(b).

The Board of Governors voted unanimously to find Respondent guilty on all four counts. Before voting on a recommended sanction, the Board reviewed Respondent's disciplinary history, which included the following: a 30-day suspension in 2008, *Kentucky Bar Ass'n v. Whitlock*, 275 S.W.3d 179 (Ky.

2008); a 181-day suspension in 2009, *Kentucky Bar Ass'n v. Whitlock*, 290 S.W.3d 53 (Ky. 2009); and a one-year suspension on May 20, 2010, *Kentucky Bar Ass'n v. Whitlock*, 311 S.W.3d 246 (Ky. 2010)¹. After hearing of this history, the Board voted unanimously to recommend that Respondent be suspended for one year, ordered to refund \$1,650 in fees to Ms. Ellis and consult with and agree to any monitoring by KYLAP, and required to pay costs.

No review of the Board's recommendation, as allowed under SCR 3.370(8), was sought. Because the Board's findings and conclusions are supported by the record and the law, and because the recommended sanction is appropriate in light of Respondent's history of prior discipline and the seriousness of the charges, this Court elects not to review the recommendation of the Board as allowed under SCR 3.370(9). The recommendation of the Board is therefore adopted pursuant to SCR 3.370(10).

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) Respondent, Jennifer Sue Whitlock, is suspended from the practice of law in the Commonwealth of Kentucky for one year from the date of this Order.

(2) Pursuant to SCR 3.390, Respondent shall, within ten days from the entry of this Opinion and Order, notify all of her clients in writing of her inability to continue to represent them and of the necessity and urgency of promptly retaining new counsel, and notify all courts in which she has matters pending of her suspension from the practice of law, and simultaneously furnish

¹ Though the Board of Governors could not have considered it at the time, this Court recently suspended Whitlock from the practice of law for one year. See *Kentucky Bar Ass'n v. Whitlock*, No. 2010-SC-000238-KB, 318 S.W.3d 602 (Ky. 2010).

copies of all such letters of notice to the Director of the Kentucky Bar Association. Furthermore, to the extent possible, Respondent shall immediately cancel and cease any advertising activities in which she is engaged.

(3) Respondent shall consult with and agree to any monitoring by the Kentucky Lawyer Assistance Program.

(4) Respondent is directed to pay restitution of all unearned fees to Ms. Ellis, said sum being \$1,650.

(5) In accordance with SCR 3.450, Respondent is directed to pay all costs associated with these disciplinary proceedings against her, said sum being \$308.54, for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: November 18, 2010.


CHIEF JUSTICE

Supreme Court of Kentucky

TO BE PUBLISHED
FINAL

2010-SC-000238-KB

DATE 9-8-10 EIA Grant, D.L.

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

JENNIFER SUE WHITLOCK

RESPONDENT

OPINION AND ORDER

A trial commissioner has recommended that Jennifer Sue Whitlock, who was admitted to practice law in Kentucky on April 16, 1998, whose Bar Roster Address is P.O. Box 171, 1401 Winchester Avenue, Suite 526, Ashland, Kentucky 41105, and whose KBA Member Number is 87562, be suspended for one year for professional misconduct related to her representation of Rebecca Anderson.

Ms. Anderson hired Whitlock in 2007 to represent her in a lawsuit in Elliott County. Ms. Anderson had previously filed suit in small claims court, and Whitlock agreed to withdraw the case from small claims and file it in either district or circuit court. Ms. Anderson signed an agreement with Whitlock on November 1, 2007 and paid her a \$200 retainer.

Ms. Anderson next spoke with Whitlock in July 2008, when Whitlock asked for all the evidence related to the case. Ms. Anderson mailed the requested information on July 11, 2008. In August or September, Whitlock

told Ms. Anderson that she had won the case and would be sending a check, minus the remainder of the fee.

Ms. Anderson never received such a check, and Whitlock failed to return multiple phone calls. When Ms. Anderson contacted the Elliot Circuit Clerk's office to confirm the status of her case, she was informed that no case existed and that the original small claims complaint had never been withdrawn. Again, Ms. Anderson attempted to contact Whitlock by phone, leaving multiple messages, but she received no response.

Ms. Anderson filed a Bar complaint, which was served on Whitlock on November 26, 2008. Whitlock did not respond to the Bar complaint.

In March 2009, the Inquiry Commission issued a formal charge containing six counts. The charge alleged violations of SCR 3.130-1.3 for failing to act with reasonable diligence and promptness in representing a client; SCR 3.130-1.4(a) for failing to keep the client informed and failing to respond to the client's requests about the status of the case; SCR 3.130-1.15(b) for failing to return the unearned portion of a fee to her client and failing to render an accounting of work performed when asked to do so; SCR 3.130-1.16(d) for failing to protect the client's interests at the termination of representation; SCR 3.130-8.1(b) for failing to respond to the bar complaint; and SCR 3.130-8.3(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Whitlock filed an answer to the charge in which she admitted the allegations "in that [she] did not file the requested complaint." She provided no other substantive response to the allegations in the charge, though she did

allege that she suffered from severe emotional problems, specifically an eating disorder, related to past abuse and was under the care of a psychotherapist.

Several pre-hearing conferences were subsequently held to discuss witnesses, scheduling, etc. Eventually, the hearing was set for December 1, 2009 to be held telephonically. On the morning of December 1, Whitlock sent an email to bar counsel indicating she would not be participating in the hearing. Bar counsel called a single witness, Ms. Anderson, at the hearing.

After the hearing, the trial commissioner concluded Whitlock was guilty of all six alleged violations of the Rules of Professional Conduct. In recommending a sanction, the trial commissioner reviewed and took into account Whitlock's prior discipline, which included: (1) a private admonition in August 2008, (2) a 30-day suspension in December 2008, with the requirement that she attend the Ethics and Professionalism Enhancement Program presented by Bar Counsel in April 2009, (3) a 181-day suspension for misconduct related to two cases in March 2009, (4) a private admonition in May 2009, and (5) a second private admonition in September 2009.¹

The trial commissioner recommended that Whitlock be found guilty of having engaged in misconduct, be suspended for one year, and be ordered to refund the \$200 and return the files and other documents to Ms. Anderson.

Neither Whitlock nor Bar Counsel has filed a notice for this Court to review the trial commissioner's decision as allowed under SCR 3.370(8). As

¹ Though the trial commissioner could not have considered it at the time, this Court recently suspended Whitlock from the practice of law for one year. See *Kentucky Bar Ass'n v. Whitlock*, No. 2010-SC-000027-KB, --- S.W.3d ---, 2010 WL 2016890 (Ky. May 20, 2010).

such, the case is before this Court pursuant to SCR 3.360(4) and 3.370(10). Because the trial commissioner's findings and conclusions are supported by the record and the law, and because the recommended sanction is appropriate in light of Respondent's history of prior discipline, her failure to respond formally to the charges against her, and the seriousness of the charges, this Court elects not to review the recommendation of the Board as allowed under SCR 3.370(9). Though the trial commissioner's findings and conclusions are advisory only, SCR 3.360(2), because no review has been sought and the Court sees no reason for its independent review, the decision of the trial commissioner is adopted pursuant to SCR 3.370(10).

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) Respondent, Jennifer Sue Whitlock, is found to have committed the misconduct alleged in the charge against her. She is therefore suspended from the practice of law in the Commonwealth of Kentucky for one year from the date of this Order.

(2) Respondent shall refund \$200 in unearned fees to her client Rebecca Anderson and shall return Ms. Anderson's file and documents.

(3) In accordance with SCR 3.450, Respondent is directed to pay all costs associated with these disciplinary proceedings against her, said sum being \$228.97, for which execution may issue from this Court upon finality of this Opinion and Order.

(4) Pursuant to SCR 3.390, Respondent shall, within ten days from the entry of this Opinion and Order, notify all clients in writing of her inability to represent them, and notify all courts in which she has matters pending of

her suspension from the practice of law, and furnish copies of said letters of notice to the Director of the Kentucky Bar Association, assuming that this is necessary given that she was already suspended from the practice of law. Furthermore, to the extent possible and necessary, Respondent shall immediately cancel and cease any advertising activities in which she is engaged.

All sitting. All concur.

ENTERED: August 26, 2010.


CHIEF JUSTICE

Supreme Court of Kentucky

TO BE PUBLISHED

FINAL

2010-SC-000027-KB

DATE 6-2-10 E.A. Crawford P.C.

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

JENNIFER SUE WHITLOCK

RESPONDENT

OPINION AND ORDER

The Board of Governors of the Kentucky Bar Association has recommended that Jennifer Sue Whitlock, who was admitted to practice law in Kentucky on April 16, 1998, whose Bar Roster Address is P.O. Box 171, 1401 Winchester Avenue, Suite 526, Ashland, Kentucky 41105, and whose KBA Member Number is 87562, be suspended for one year.

Roy L. Crawford hired Whitlock in 2007 to represent him in a lawsuit against Brester Homes of Kentucky. On December 17, 2007, Crawford sent her a check for \$2,500, which she deposited in her account.

Crawford did not receive any information thereafter about the extent of Whitlock's work, nor did he receive any bills. In May 2008, Crawford unsuccessfully tried to contact Whitlock by phone and email to obtain an update on his case. He emailed her again three times in July 2008 but still received no reply. In September 2008, Crawford sent a letter to Whitlock by certified mail asking for his records, his file, a detailed bill and a response to his requests for information. Whitlock did not respond.

Crawford subsequently filed a bar complaint, a copy of which was personally served on Whitlock in October 2008. No response was filed, so Bar Counsel mailed a reminder letter in November 2008, which was personally signed for by Whitlock. On January 14, 2008, Whitlock emailed Bar Counsel stating that she would file a response within 24 hours, but no response was filed.

The Inquiry Commission issued a formal charge containing five counts on February 13, 2009. The charge alleged violations of (1) SCR 3.130-1.3 for failing to act with reasonable diligence and promptness in representing a client; (2) SCR 3.130-1.4 for failing to respond to the client's requests about the status of the case; (3) SCR 3.130-1.5(b) for failing to return the unearned portion of a fee to her client and failing to render an accounting of work performed when asked to do so; (4) SCR 3.130-1.16(d) for failing to return the client's documents and files and to provide a detailed billing statement on request; and (5) SCR 3.130-7.1(b) for failing to respond to the bar complaint.¹

On March 13, 2008, Whitlock filed her response to the charge, admitting the factual allegations. She submitted documentation of some services performed for Crawford and an itemization of her time spent thereon. The response was not filed, however, because it was untimely. It was returned to Whitlock with a note directing her to file a motion for leave to file a late pleading. No such motion was ever filed.

¹ The Rules of Professional Responsibility contained in SCR 3.130 have since been renumbered and substantially amended. Thus, the rules cited herein may not correspond to the rules currently in force.

On April 6, 2009, the Inquiry Commission issued an amended charge (to correct typographical errors). When a copy was attempted to be served, the deputy sheriff found that Whitlock's office was vacant. Service was subsequently completed on the Executive Director of the KBA as the designated agent for service of process.

On July 29, 2009, this matter was consolidated with another disciplinary matter against Whitlock, apparently due to a mistaken belief that she had filed an answer to this charge. When the mistake was discovered, Bar Counsel attempted to contact Whitlock by phone, leaving several messages in August 2009. Whitlock did not return any of the calls, and eventually the two disciplinary matters were severed.

The matter proceeded to the Board of Governors, which noted that Whitlock formally failed to respond to the charge against her but also took notice of the untimely response she filed. The response asserted that medical and mental health issues played a role in the underlying matters. The Board voted to find Whitlock guilty of all five counts of the charge and recommended that she be suspended for one year, refund the unearned portion of the fee to her client, attend Bar Counsel's remedial ethics program, and consult with and possibly agree to monitoring by the Kentucky Lawyers Assistance Program.

In so concluding, the Board also took into account Whitlock's prior discipline, which included: (1) a private admonition in August 2008, (2) a 30-day suspension in December 2008, with the requirement that she attend the Ethics and Professionalism Enhancement Program presented by Bar Counsel in April 2009, (3) a 181-day suspension for misconduct related to two cases in

March 2009, and (4) a private admonition in May 2009. The record also shows a second private admonition in September 2009, though the Board did not mention it in its recommendation.

Neither Whitlock nor Bar Counsel has filed a notice for this Court to review the Board's decision as allowed under SCR 3.370(8). Because the Board's findings and conclusions are supported by the record and the law, and because the sanction recommended by the Board is appropriate in light of Respondent's history of prior discipline, her failure to respond formally to the charges against her, and the seriousness of the charges, this Court elects not to review the recommendation of the Board as allowed under to SCR 3.370(9). The decision of the Board is therefore adopted pursuant to SCR 3.370(10).

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) Respondent, Jennifer Sue Whitlock, is suspended from the practice of law in the Commonwealth of Kentucky for one year from the date of this Order.

(2) Respondent shall refund \$1,275 in unearned fees to her client Roy Crawford.

(3) Respondent shall attend and complete the Ethics and Professionalism Enhancement Program presented by the Office of Bar Counsel within one year if she has not already done so.

(4) Respondent shall consult with and, if indicated, agree to monitoring by the Kentucky Lawyer's Assistance Program.

(5) In accordance with SCR 3.450, Respondent is directed to pay all costs associated with these disciplinary proceedings against her, said sum

being \$314.01, for which execution may issue from this Court upon finality of this Opinion and Order.

(6) Pursuant to SCR 3.390, Respondent shall, within ten days from the entry of this Opinion and Order, notify all clients in writing of her inability to represent them, and notify all courts in which she has matters pending of her suspension from the practice of law, and furnish copies of said letters of notice to the Director of the Kentucky Bar Association, assuming that this is necessary given that she was already suspended from the practice of law. Furthermore, to the extent possible and necessary, Respondent shall immediately cancel and cease any advertising activities in which she is engaged.

All sitting. All concur.

ENTERED: May 20, 2010.


CHIEF JUSTICE

TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

2008-SC-000936-KB

DATE 8/26/09 Kelly Klaber D.C.

KENTUCKY BAR ASSOCIATION

MOVANT

V. IN SUPREME COURT

JENNIFER SUE WHITLOCK

RESPONDENT

OPINION AND ORDER

The Board of Governors for the Kentucky Bar Association (KBA), has recommended that Respondent, Jennifer Sue Whitlock, KBA Member No. 87562, with a last known bar roster address of 1401 Winchester Avenue, Suite 526, Ashland, Kentucky 40353, be suspended from the practice of law for one hundred and eighty-one (181) days, for multiple counts of misconduct. This Opinion addresses KBA file numbers 16368 and 16446. We agree with the Board's rulings and adopt its recommendations.

File No. 16368

On August 14, 2007, Respondent met with Margie Hubicsak to represent her in a bankruptcy proceeding. Respondent agreed to represent Ms. Hubicsak, who paid Respondent a total of \$1,300.00 for her services from August 14 to September 19. After Ms. Hubicsak paid

in full, she did not hear from Respondent for several months. Ms. Hubicsak then called Respondent's office only to learn that Respondent no longer worked there. Over the next two months, Ms. Hubicsak left Respondent multiple messages on her cell phone but received no response. Finally, Respondent contacted Ms. Hubicsak on February 1, 2008, and told her that she was still waiting on a court date to be assigned. Ms. Hubicsak did not believe Respondent and contacted another lawyer for assistance, whereupon it was discovered that Respondent had not even filed the bankruptcy petition. Thereafter, Ms. Hubicsak filed a complaint.

Respondent received the Bar Complaint on May 6, 2008. She received a reminder letter on June 2, 2008. Respondent did not file a response to the Complaint.

On September 10, 2008, the Inquiry Commission issued a four-count charge against Respondent. Count I charged Respondent with violating SCR 3.130-1.3 (requiring a lawyer to "act with reasonable diligence and promptness in representing a client"). Count II charged Respondent with violating SCR 3.130-1.4(a) (requiring a lawyer to "keep a client reasonably informed about the status of a matter"). Count III charged Respondent with violating SCR 3.130-1.16(d) (requiring a lawyer to take reasonable steps to protect a client's interests upon termination of representation). Lastly, Count IV charged Respondent with violating SCR 3.130-8.1(b) (forbidding a lawyer from knowingly failing to respond to a lawful demand for information from a disciplinary authority).

Respondent signed the mail receipt for the charge on September 26, 2008. Respondent failed to answer the charge.

Because no answer was filed, the matter went to the Board of Governors as a default case, pursuant to SCR 3.210(1). The Board voted sixteen (16) to zero (0) to find Respondent guilty on all four (4) counts of the charge.

File No. 16446

Melissa Fields and her husband hired Respondent in August 2007 to represent them in filing for bankruptcy. Respondent was paid a total of \$1,300.00 for representation of Mr. and Mrs. Fields.

Mr. and Mrs. Fields gathered all the paperwork that Respondent required of them and completed their credit counseling in September 2007. However, they did not hear from Respondent until December 2007, at which time Respondent informed them that she was having computer trouble and had been unable to file the bankruptcy petition. The petition was finally filed in January 2008 and Respondent informed the Fields of their court date on February 15, 2008. When Mrs. Fields arrived on February 15, 2008, Respondent informed her that the court date had been postponed because the proper paperwork had not been filed. What Respondent failed to mention was that the missing paperwork was the Attorney Fee Disclosure. The Fields case was dismissed in late February 2008 because Respondent failed to file the Attorney Fee Disclosure. Respondent did not inform the Fields' of the

dismissal, and did not respond to repeated attempts by the Fields to contact her. Thereafter, Mr. and Mrs. Fields filed a complaint.

On May 23, 2008, Respondent personally signed the return receipt for the Bar Complaint. A reminder letter was mailed to Respondent on June 20, 2008. Respondent did not file a response to the Complaint.

On August 13, 2008, the Inquiry Commission filed, issued, and mailed a five-count charge against Respondent. Four (4) of the five (5) charges are identical to the charges issued in KBA file No. 16368, supra, pertaining to violations of SCR 3.130-1.3, 3.130-1.4(a), 3.130-1.16(d), and 3.140-8.1(b). In addition to those four (4) charges, Respondent was charged with violating SCR 3.130-1.1 (requiring an attorney provide competent representation to a client). The charge was returned on September 2, 2008, marked "unclaimed". Ultimately, Respondent was personally served by the Boyd County Sheriff's Office on September 15, 2008. Respondent failed to answer the charge.

Once again, because no answer was filed, the matter went to the Board of Governors as a default case, pursuant to SCR 3.210(1). The Board voted sixteen (16) to zero (0) to find Respondent guilty on all five (5) counts of the charge.

CONCLUSION

The preceding files involve the same patterns of conduct and both resulted in analogous findings and charges, with case No. 16446 adding an additional charge for failure to provide competent representation. We note that Respondent has once already been suspended from the

practice of law for this very same behavior. Kentucky Bar Association v. Jennifer Sue Whitlock, ---S.W.3d---, 2008 WL 5272763 (Ky. Dec. 18, 2008).

Here, Respondent failed to file an answer to the charges, resulting in both cases being classified as default cases. The Board of Governors came to unanimous decisions in both cases. Neither party filed notice, pursuant to SCR 3.370(8), for this Court to review the Board's decision, nor do we elect to review the decision of the Board pursuant to SCR 3.370(9). Therefore, we adopt the decision of the Board pursuant to SCR 3.370(10).

ACCORDINGLY, the Court ORDERS:

- 1) Respondent, Jennifer Sue Whitlock, is adjudged guilty on all counts and hereby is suspended from the practice of law for one hundred and eighty-one (181) days from the date of this Opinion and Order;
- 2) Pursuant to SCR 3.390, Respondent shall notify all courts in which she has matters pending of her suspension from the practice of law, and notify all clients in writing of her inability to represent them and of the necessity and urgency of promptly retaining new counsel. Such notification shall be by letter duly placed in the United States mail within ten (10) days of the date of this order. Respondent shall simultaneously provide a copy of all such letters to the Kentucky Bar Association. Furthermore, to the extent


possible and necessary, Respondent shall immediately cancel and cease any advertising activities in which she is engaged.

- 3) In accordance with SCR 3.450, Respondent is directed to pay all costs associated with these disciplinary proceedings in the amount of \$786.64, for which execution may issue from this Court upon finality of this Opinion and Order;
- 4) If she has not already done so, Respondent shall immediately refund \$1,300.00 (plus interest at the legal interest rate stated in KRS 360.010, calculated from the date the bar complaint was filed) in fees to each of the clients who filed the underlying complaints against her;
- 5) Whitlock shall attend the Bar Counsel's remedial ethics program within one year of the date of this opinion and order. Whitlock shall pass any examination given at the end of the program. Whitlock will not apply for CLE credit of any kind for her attendance at that remedial ethics program and is required to furnish a release and waiver to the Office of Bar Counsel to review her records in the CLE department that might otherwise be confidential, with such release to continue in effect for one year after completion of the remedial education, in order to allow the Office of Bar Counsel to verify that she has not reported any hours to the CLE Commission that are taken as remedial education;

- 6) Whitlock shall submit to mental health-related supervision, as approved by the Kentucky Bar Association's Lawyer Assistance Program (KYLAP), and such supervision shall continue to the extent and duration as deemed necessary and appropriate by KYLAP; and
- 7) If Respondent fails to comply with any of the terms of discipline as set forth herein, upon motion of the Office of Bar Counsel, the Court may impose other discipline in this matter.

All sitting. All concur.

ENTERED: March 19, 2009.



CHIEF JUSTICE

Supreme Court of Kentucky

2008-SC-000743-KB

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FINAL

DATE 11/5/09 Kelly Klaber DC.
MOVANT

KENTUCKY BAR ASSOCIATION

V.

IN SUPREME COURT

JENNIFER SUE WHITLOCK

RESPONDENT

OPINION AND ORDER

The Board of Governors of the Kentucky Bar Association has recommended that Jennifer Sue Whitlock, who was admitted to the practice of law in October 1998 and whose bar roster address is 1401 Winchester Avenue, Suite 526, Ashland, Kentucky 40353, be suspended from the practice of law for thirty days. We agree with the Board's recommendation.

In July 2007, Whitlock worked for attorney Robert Caummisar in Grayson, Kentucky. During that month, Whitlock met with Michelle Garrett, who had made an appointment with the firm's receptionist to speak to an attorney about filing bankruptcy. Whitlock and Garrett agreed on a fee of \$1,100; and Garrett paid \$800 at that time, issuing a check payable to Whitlock. Garrett later brought some supporting documents to Whitlock's firm.

Whitlock personally endorsed the \$800 check but did not file the bankruptcy petition for Garrett. Whitlock also did not return any of the \$800

to Garrett. Garrett said that she called and wrote Whitlock but received no response. Nevertheless, Garrett sent the remaining \$300 of the \$1,100 fee to Caummisar since Whitlock worked for him. That \$300 check has, apparently, not been cashed.

In November 2007, Caummisar's staff informed Garrett that Whitlock no longer worked there and provided her with a printout from the KBA's website containing Whitlock's bar roster address. Garrett was also given Whitlock's cellular telephone number, but Whitlock failed to return Garrett's calls.

In January 2008, Garrett signed a bar complaint against Whitlock. Whitlock eventually responded to the bar complaint. In her response, Whitlock admitted meeting Garrett but claimed that she sent a notice to all of her clients, including Garrett, when she changed offices. She also claimed that she sent a letter to Garrett asking her to let her (Whitlock) know when she was ready to sign the bankruptcy petition but received no response. She also claimed to have left phone messages for Garrett, to which Garrett did not respond. Whitlock also claimed that a receptionist at Caummisar's firm had advised her that the staff at that firm had been advised not to give out Whitlock's new contact information. Whitlock also submitted an affidavit from that former employee to that effect, although that affidavit purported to be from an assistant Carter County Attorney, not a receptionist. Whitlock also attached a copy of a KBA change of address form, dated October 17, 2007.

Garrett submitted a reply to Whitlock's response in which she largely denied that Whitlock had called her before filing of the bar complaint or had

sent her any change of address notification or letter. Bar counsel forwarded Garrett's reply to Whitlock and asked Whitlock for additional information and supporting documents, but Whitlock did not respond.

In May 2008, the Inquiry Commission issued a five-count charge against Whitlock. Count I charged Whitlock with violating Supreme Court Rule (SCR) 3.130(1.3) (requiring a lawyer to "act with reasonable diligence and promptness in representing a client"). Count II charged Whitlock with violating SCR 3.130(1.4)(a) (requiring a lawyer to "keep a client reasonably informed about the status of a matter"). Count III charged Whitlock with violating SCR 3.130(1.16)(d) (requiring a lawyer to take reasonable steps to protect a client's interest upon termination of representation). Count IV charged Whitlock with violating SCR 3.130(3.3)(a) (requiring an attorney to refrain from knowingly making a false statement of fact to a tribunal).¹ Finally, Count V charged Whitlock with violating SCR 3.130(8.1)(b) (forbidding a lawyer from knowingly failing to respond to a lawful demand for information from a disciplinary authority). Whitlock filed a belated response, asserting that she suffered from an eating disorder, depression, and had recently undergone surgery.

The Board voted thirteen to zero (with one recusal) to find Whitlock not guilty of Count IV (making a false statement to a tribunal). But the Board also voted thirteen to zero (with one recusal) to find Whitlock guilty of Counts I, II,

¹ The gravamen of this charge was the misidentification of the former receptionist at Caummisar's firm as an assistant county attorney in the affidavit.

III, and V. Then, by a vote of twelve to one, the Board found that Whitlock should be suspended from the practice of law for thirty days, with additional monitoring and reimbursement requirements. One Board member voted for a sixty-day suspension, thirty days of which was to be probated.

Whitlock has not filed a notice of review under SCR 3.370(8), nor do we elect to review the decision of the Board under SCR 3.370(9), meaning that the decision of the Board is hereby adopted under SCR 3.370(10).

Although not mentioned by the parties, we are aware that this case is at least somewhat akin factually to Kentucky Bar Association v. Unnamed Attorney,² a case in which we imposed only a private reprimand on an attorney who, like Whitlock, left his firm without adequately notifying his clients. However, because Unnamed Attorney is distinguishable from this case in several respects, we have concluded that Whitlock's misconduct merits a more severe penalty. First, the KBA was unable to reach a conclusion on the guilt of the unnamed attorney in that case and, thus, had not recommended a sanction,³ whereas, the KBA unanimously found Whitlock guilty of four counts of professional misconduct and has recommended a proposed sanction. Second, unlike Whitlock, the attorney in the Unnamed Attorney case did not have the benefit of our decision carefully setting forth the types of steps an attorney should take upon leaving a firm. Third, the attorney in Unnamed

² 205 S.W.3d 204 (Ky. 2006).

³ *Id.* at 204.

Attorney was leaving the practice of law altogether,⁴ unlike Whitlock's mere change of firms. Fourth, though Whitlock and the attorney in Unnamed Attorney had each received a private reprimand in the past, Whitlock's private reprimand was issued just months ago (for misconduct similar to that evidenced in the case at hand), whereas, the unnamed attorney's private reprimand had occurred several years before the issuance of our opinion.⁵ Next, the attorney in Unnamed Attorney was only found guilty of one count of violating SCR 3.130(1.16)(d),⁶ whereas, Whitlock was found guilty on a total of four counts of misconduct. Finally, Whitlock herself has not filed a notice of review contending that her penalty is disproportionately harsh, which we construe to mean that she does not contest the KBA's proposed sanction.

ACCORDINGLY, the Court ORDERS:

- 1) Jennifer Sue Whitlock is suspended from the practice of law for thirty days from the date of this opinion and order;
- 2) In accordance with SCR 3.450, Whitlock is directed to pay all costs associated with these disciplinary proceedings, said sum being \$254.99, for which execution may issue from this Court upon finality of this Opinion and Order;
- 3) If she has not already done so, Whitlock shall immediately refund to Garrett \$800 (plus interest at the legal interest rate stated in KRS 360.010,

⁴ *Id.* at 208.

⁵ *Id.* at 210.

⁶ *Id.*

calculated from the date the bar complaint was filed) and shall also return Garrett's documents and safe deposit box keys;

4) Whitlock shall attend the Bar Counsel's remedial ethics program within one year of the date of this opinion and order. Whitlock shall pass any examination given at the end of the program. Whitlock will not apply for CLE credit of any kind for her attendance at that remedial ethics program and is required to furnish a release and waiver to the Office of Bar Counsel to review her records in the CLE department that might otherwise be confidential, with such release to continue in effect for one year after completion of the remedial education, in order to allow the Office of Bar Counsel to verify that she has not reported any hours to the CLE Commission that are taken as remedial education;

5) Whitlock shall submit to mental health-related supervision, as approved by the Kentucky Bar Association's Lawyer Assistance Program, and such supervision shall continue to the extent and duration as deemed necessary and appropriate by KYLAP; and

6) If Whitlock fails to comply with any of the terms of discipline as set forth herein, upon motion of the Office of Bar Counsel the Court may impose other discipline in this matter.

All sitting. All concur.

ENTERED: December 18, 2008.



CHIEF JUSTICE